

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

M&C HOLDINGS DELAWARE  
PARTNERSHIP, et al.,

Plaintiffs,

v.

GREAT AMERICAN INSURANCE  
COMPANY,

Defendant.

Case No. 1:20-cv-00121-SJD-KLL

Judge Susan J. Dlott

Magistrate Judge Karen L. Litkovitz

**STIPULATION FOR UNCONDITIONAL  
DISMISSAL OF ALL REMAINING  
CLAIMS, ORDER AND FINAL  
JUDGMENT**

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Plaintiffs, M&C HOLDINGS DELAWARE PARTNERSHIP, M&C HOTEL INTERESTS, INC., M&C MANAGEMENT SERVICES (USA), INC., CDL HOTELS (USA), INC. and RHM-88, LLC (collectively, "Plaintiffs"), by and through their counsel, Fox, Swibel, Levin & Carroll, LLP and The Law Office of Bryce A. Lenox, Esq. LLC, and the Defendant Great American Insurance Company ("Defendant"), by and through its counsel, The Dratch Law Firm, P.C. and Flagel & Papakirk LLC, hereby stipulate to entry of Final Judgment in favor of the Plaintiffs as follows:

WHEREAS, on February 8, 2021, the Court granted Plaintiffs' motion for partial summary judgment on the issue of liability as to Count I (Breach of Contract) and Count III (Declaratory Judgment) of Plaintiffs' Complaint against Defendant with respect to a certain crime protection insurance policy (the "Policy") that is the subject of this action [Dkt. 48 ("MSJ Order")];

WHEREAS, the parties have informed the Court that they have stipulated to entry of judgment in favor of Plaintiffs in the amount of \$1,704,359.00 in connection with Count I (Breach of Contract);

WHEREAS, the February 8, 2021 order observed that issues of fact remained as to Count II (Bad Faith Denial of Coverage) of Plaintiffs' Complaint and Defendant's affirmative defenses based on a two-year contractual limitations clause contained in the Policy;

WHEREAS, pursuant to a settlement agreement, Plaintiffs have finally and forever released and/or waived Count II of their Complaint;

WHEREAS, pursuant to a settlement agreement, Defendant has finally and forever released and/or waived its affirmative defenses based upon the two-year contractual limitations clause contained in the Policy and any other defenses unrelated to the issue of coverage; specifically Defendants' First, Fourth, Fifth, Eighth, Ninth, Tenth and Eleventh Affirmative Defenses;

WHEREAS, the Parties agree, and the Court finds, that the above-referenced stipulations, releases and/or waivers have eliminated all issues of fact and law remaining before this Court;

WHEREAS, Great American continues to unequivocally reserve its right to appeal the MSJ Order, but consents to the form of this judgment for the purpose of accelerating appellate review of such MSJ Order, which has effectively resolved all remaining issues in this litigation. *See Raceway Props., Inc. v. Emprise Corp.*, 613 F.2d 656, 657 (6th Cir. 1980) and *Innovation Ventures, LLC v. Custom Nutrition Laboratories, LLC*, 912 F.3d 316 (6th Cir. 2018);

WHEREAS, the Court has been further informed that, as part of their settlement, Plaintiffs and Defendant have agreed that Count II (Bad Faith Denial of Coverage) of the Complaint shall be dismissed with prejudice and that Defendant's affirmative defenses that implicate the two-year contractual limitation clause and/or do not implicate the Court's grant of partial summary judgment in favor of Plaintiffs (First, Fourth, Fifth, Eighth, Ninth, Tenth and Eleventh Affirmative Defenses) shall be dismissed with prejudice, and both Plaintiffs and Defendant further agree that these claims

or issues will not be reinstated or presented for adjudication in the instant action (whether following an appellate court's remand or mandate, or otherwise);

WHEREAS, if the MSJ Order is affirmed, there will be no dispute on the issue of damages on Counts I and III in light of the parties' settlement agreement;

WHEREAS, the Court has determined that, in light of the dismissals as set forth in the immediately preceding paragraphs, there are no further issues to be adjudicated and final judgment should be entered, in order to vest the Sixth Circuit Court of Appeals with appellate jurisdiction to review the MSJ Order establishing liability against Great American on Count I and Count III of the Complaint.

**NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDICATED, AND DECREED AS FOLLOWS:**

1. Judgment is hereby entered in favor of the Plaintiffs and against Defendant in the amount of \$1,704,359.00 in connection with Count I and Count III of Plaintiffs' Complaint;
2. Count II (Bad Faith Denial of Coverage) of Plaintiffs' Complaint is hereby dismissed with prejudice;
3. Defendants' First, Fourth, Fifth, Eighth, Ninth, Tenth and Eleventh Affirmative Defenses are hereby dismissed with prejudice; and
4. Each party shall bear its own costs.

  
Susan J. Dlott, U.S.D.J.

Agreed and So Stipulated:

/s/ Daniel A. Dorfman  
Attorney for Plaintiffs

Daniel A. Dorfman (admitted pro hac vice)  
David J. Ogles (admitted pro hac vice)

/s/ James Papakirk  
Attorney for Defendant

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